

REMARKS

I. Status Of The Claims And The Rejections

The Office Action Summary indicates that claims 20, 22, 23, 32, and 33 are withdrawn from consideration. The Office Action Summary indicates that claims 18, 21, 24-31, 34, and 35 are rejected, and that claim 19 is objected to, but would be allowable if rewritten in independent form.

Applicants respectfully traverse the substantive rejection described on pages 2-4 of the Office Action. Nonetheless, applicants have amended independent claim 18 to more clearly set forth the subject matter regarded as patentable. Applicants respectfully request reconsideration of the claims, based on this amendment and the following remarks.

The Office Action Summary indicates that the drawings filed on March 24, 2009, are accepted. The Office Action Summary acknowledges the claim for foreign priority under Section 119, and indicates that all certified copies of the priority documents have been received.

II. Procedural Questions

Applicants respectfully request that the examiner review the status of claim 21. More particularly, the Office Action Summary indicates that claim 21 is rejected. Yet, claim 21 is not included in the more detailed description of the rejection, which begins on page 2 of the Office Action and continues to page 4 of the Office Action. Notably, claim 21 depends upon dependent claim 19, which is indicated to be allowable. Applicants respectfully request clarification of the status of claim 21.

Also, applicants remain of the view that claim 20 should not be indicated as withdrawn. And given that the substantive rejection set forth on page 2 includes claim 20, perhaps the indication that claim 20 has been withdrawn, as indicated on the Office Action Summary, and as indicated at the top of page 2, is incorrect. Again, applicants respectfully request clarification.

Applicants previously requested clarification of this issue in their last response, but still have not yet received any such clarification.

Moreover, applicants remain of the view that claim 32 has been incorrectly grouped with the withdrawn claims in the Office Action Summary. Applicants remain of the view that claim 32 should have been subject to substantive examination, based on the response to the restriction requirement. It is claim 31 that should have been withdrawn. As stated in the prior response, it appears that claims 31 and 32 have been inadvertently transposed in this final Office Action, just as they were in the prior Office Action.¹

Again, applicant restates its request for clarification as to this issue.

III. The Deficiencies of the Substantive Rejection

Independent claim 18 is directed to a hybrid drive for a motor vehicle with a drive train (1). The hybrid drive includes a combustion engine (20) and vehicle transmission (3) with variable gear ratio, along with first and second electrical machines (4, 6). Each of the electrical machines can be operated both as a motor and a generator, and each comprises a stator (34, 44) and a rotor (38, 48). The second electrical machine (6) is in a permanent non-positive connection with an input (5) of the vehicle transmission. First and second shiftable clutches (7, 8) are arranged between the first and second machines (4, 6) and the drive shaft and the combustion engine (2). The electrical machines (4, 6) are connected with each other and also connectable with an electrical energy source (12) via a power actuation control (11). The two electrical machines (4, 6) are arranged in a common housing (20).

¹ For these reasons, in the claims presented above, applicants have again marked claim 31 as "withdrawn" and claim 32 as "previously presented," to accurately characterize what applicants regard to be the correct status of these claims. If the examiner disagrees, the undersigned attorney respectfully requests that he be contacted by telephone. This footnote is nearly identical to a footnote that appeared in the prior response. Namely, in the claims presented in this Response After Final, applicants marked claim 31 as "withdrawn" and claim 32 as "previously presented," to accurately characterize what applicants believe to be the correct status of these claims.

More specifically, as now stated, the two stators (34, 44) of the two electrical machines (4, 6), and the power actuation control (11) are accommodated along a circumference of a common carrier (22). The common carrier (22) comprises a cooler (52) for cooling the stators (34, 44) and the power actuation control (11). The cooler (52) is integrally formed in the common carrier (22). The support for these additional features, as now recited in claim 18, is found in Fig 3, and at page 8, lines 16 to 24, of the specification.

The various dependent claims recite one or more additional features in combination with the features set forth in independent claim 18. Applicants respectfully reassert that independent claim 18, and likewise each of dependent claims 20, 21, 24-30, and 32 is allowable.

More particularly, applicants respectfully reassert their disagreement with the Office Action's characterization of Morisawa '631. Morisawa '631 fails to show a shiftable clutch arranged between electrical machines and the drive shaft of a combustion engine. Morisawa '631 also fails to disclose a carrier of the type recited in claim 18.

The final Office Action reasserts the prior position, that the common housing 101 of Morisawa '631 "acts as a common carrier for both stators, as shown in Figs 1-3." In response, applicants reassert their disagreement as to this issue. Claim 18 recites that the two stators (34, 44) of the electric machines (4, 6) and the power actuation control (11) are accommodated along a circumference of a common carrier. Moreover, as asserted previously, claim 18 recites a carrier (22) within a housing (20).

Still further, as previously asserted, although the housing (20) of claim 18 could arguably correspond to the housing (101) of Morisawa '631, the housing (101) of Morisawa '631 can not also be a carrier in the housing. It is physically impossible for the component (101) of Morisawa '631 to be both a housing and a carrier, as recited in claim 18. It necessarily follows that

Morisawa '631 does not disclose a common carrier (22) for the two stators and the power actuation control (11), as recited in claim 18.

The Office Action acknowledges that Morisawa does not disclose a "cooling means for the stator on the carrier." Thus, it is also clear that Morisawa '631 fails to disclose a common carrier (22) which comprises a cooler (52) for cooling the stators (34, 44) and the power actuation control (11), with the cooler formed integrally in the common carrier. Rather, Morisawa '631 discloses a flywheel (106) (see Figs 1 and 3), and a damper (107) between the electrical machines and the drive shaft.

As previously asserted, Fliege '646 fails to show a shiftable clutch arranged between the electrical machines and the drive shaft of a combustion engine. Fliege '646 also fails to disclose a common carrier for the two stators. Applicants respectfully disagree with the assertion in the Office Action, that Fliege '646 discloses a "carrier." Rather, reference numerals 7-9 in Fliege '646 refer to "two second modular units 7 and 9, connected to the first modular unit 3. (See col 7, lines 56-57.) These modular units 7, 9 of Fliege '646 do not correspond to a carrier (22) that is located within a housing (20), as recited in claim 18.

Moreover, Fliege '646 does not disclose a common carrier that carries the power actuation control and the stators. Rather, in Fliege '646, the power actuation control is mounted on a mounting board 99 that is arranged opposite the electrical machine.

A person of ordinary skill in the art would not have combined the cited references in the manner suggested. First of all, neither of the two relied-upon references supplies any teaching, suggestion, or motivation for making the alleged combination. The Supreme Court stated in *KSR* that the teaching, suggestion, motivation test is still a valid test for determining obviousness. It remains relevant to this analysis. And under this still-relevant test, this rejection is improper.

Moreover, the Office Action fails to supply any objective reason for making the relied-upon combination of these two prior art references. Instead, it is based on the improper and erroneous assertion that: "It would have been obvious to one having ordinary skill in the art at the time of the invention to have provided the motor drive train of Morisawa et al with the stator cooling means of Fliege in order to prevent overheating of the motor." This statement is purely conclusory. It has no basis in fact. It has no evidentiary support in this record.

That is, there is no objective basis for asserting that a person of ordinary skill would believe that the structure of Morisawa '631 needs protection from overheating. Morisawa '631 seeks to increase efficiency, and to do so within a limited space. (See col 1, lines 45-53) Fliege '646 seeks to provide manufacturers with the possibility to orient their products more economically for different vehicle models and application. (See col 2, lines 33-37) Fliege '646 pursues this objective by using a modular approach.

The speculative and conclusory statement in the Office Action is not sufficient, under KSR, for establishing a prima facie case of obviousness. On that basis alone, the rejection is improper and should be withdrawn.

Even if a hypothetical person of ordinary skill in the art were to combine these two cited references, the resultant hypothetical combination would still lack the features of claim 18. More particularly, the resultant hypothetical combination would still lack a common carrier that accommodates the two stators and the power actuation control along a circumference thereof, and which has an integrally formed cooler.

For these reasons, applicants respectfully assert that the obviousness rejection of claim 18 is improper, and should be withdrawn.

Additionally, each of dependent claims 20, 21, 24-30, and 32 recites one or more additional features in combination with the features of claim 18. Based on the same arguments


set forth herein as to claim 18, and also because the Office Action is at least as deficient with respect to the combinations of features set forth in these dependent claims, applicants respectfully assert that each of these dependent claims is also patentable.

III. Conclusion

Based on these amendments and these Remarks, applicants respectfully submit that the claims are in condition for allowance, and request that they be allowed without further delay. If for any reason the examiner disagrees with this assertion, or has any question regarding the allowability of these claims, the undersigned attorney respectfully requests that he be contacted by telephone, at the telephone number listed below.

It is believed that no fee is due for this filing. If any fee is deemed due, consider this as an authorization to charge Deposit Account 23-3000 therefore.

Respectfully submitted,
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